

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah O'Leary	Team: Team # 5	CCRB Case #: 200303053	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/22/2003 8:30 PM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 10/22/2004	EO SOL 10/22/2004	
Date/Time CV Reported Tue, 04/22/2003 5:09 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/29/2003 2:02 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. LT Michael Lipetri	00000	906647	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Richard Miller	04236	894190	E S U
2. POM Edward Waldron	04005	919841	ESS 09
3. DTS Raymond Neuman	07274	905534	E S U
4. POM Patrick Bergin	25643	920023	ESS 03
5. SGT Matthew Mccarthy	05439	891780	ESS 10
6. LT Deborah Allen	00000	883432	GANG DV
7. DT3 Robert Herley	06735	904141	GANG BN

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Lipetri	Abuse: Lieutenant Michael Lipetri entered and searched § 87(2)(b)	§ 87(2)(b)
B. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)

Synopsis:

On April 22, 2003, around 8:30 PM, Lieutenant Michael Lipetri (a sergeant at the time of the incident) and other members of the Brooklyn Gang Division, entered and searched the apartment of § 87(2)(b) § 87(2)(b) in Brooklyn, pursuant to a § 87(2) search warrant. Present inside the apartment at the time was § 87(2)(b) a § 87(2)(b) -old female, her § 87(2)(b) -old daughter § 87(2)(b) and two § 87(2)(b) year-old neighbors § 87(2)(b) and § 87(2)(b). During the course of that search, an unidentified officer from the Emergency Services Unit allegedly kicked § 87(2)(b) in her leg. Nothing was recovered inside the apartment and no arrests were made.

§ 87(2)(g)

Summary of Complaint:

This complaint was initially filed by § 87(2)(b) the mother of the two children who were present inside the apartment, § 87(2)(b) and § 87(2)(b) and neighbor of § 87(2)(b) § 87(2)(b) filed her complaint with the IAB on the date of the incident (Enc. 2A-B), and it was referred to the CCRB seven days later (Enc. 3A-B). However, § 87(2)(b) officially withdrew her complaint from the CCRB on May 6, 2003. § 87(2)(b) was contacted one week later as a victim for the case, at which time she expressed that she did wish to pursue the complaint.

§ 87(2)(b) provided three statements in connection with this investigation. She made a statement to the IAB on the date of the incident (Enc. 4A-B), and provided a CCRB statement on May 16, 2003 (Enc. 5A-E). Lastly, she provided a brief phone statement to the CCRB on November 24, 2003 (Enc. 6). The statements she provided were generally consistent, although she omitted her claim that Detective Herley told her to shut up during her first two statements.

During her CCRB interview, § 87(2)(b) stated that on April 22, 2003, she was at her apartment at § 87(2)(b) in Brooklyn. Also present inside the apartment was her § 87(2)(b) -old daughter, § 87(2)(b) and two children who lived upstairs, § 87(2)(b) -old § 87(2)(b) and § 87(2)(b) -old § 87(2)(b). The kids were watching a movie in § 87(2)(b)'s room and, around 8:30 PM, § 87(2)(b) announced that she was going to take a shower.

When she was almost finished with her shower, she heard a substantial amount of banging coming from the front door. § 87(2)(b) opened the shower door, just as an unidentified officer bearing a shield and pointing a tazer gun opened the door to her bathroom. He yelled, "Police – get out! Anyone else in the there?" § 87(2)(b) automatically stepped out of the shower. The officer placed her into handcuffs and made her stand naked in the bathroom to wait for a female officer to come and get her dressed.

At some point that officer asked § 87(2)(b) "Where is he?" When she asked who he was looking for, the officer replied, "The guy that just came in here to buy drugs." She asked him, "What guy?" to which he explained that they had been chasing after someone who had ran into her apartment to buy drugs. She informed them that there was no one else present in the apartment aside from her daughter, the two kids and herself. As she explained this to him, however, the officer repeatedly told her to "shut up," and reiterated that they had been watching the male who came to buy drugs inside her apartment. In addition, she asked him to see a copy of a search warrant but he again told her to "shut up," and ignored her request.

It took almost a half-hour for the female officer, later identified as Lieutenant Deborah Allen because she was the only female officer at the scene, to arrive and take § 87(2)(b) into her bedroom. Lieutenant Allen removed the handcuffs, picked out some clothing and searched the clothes before handing them over. After putting her back into handcuffs, they waited a short while longer before she was placed in the living room.

All of the officer inside the apartment were in uniform with the shields over their faces except for one, who was in plain clothing. The officers went into the children's room and placed all three kids into handcuffs, although § 87(2)(b) did not observe that. Her daughter § 87(2)(b) was crying so hysterically that eventually an officer called the neighbors' mother, § 87(2)(b) to come down and take the kids, which she did. The officers removed the children's handcuffs before § 87(2)(b) came to get them.

The officers searched her apartment and turned it into a complete mess. She claimed that it was a highly extensive search; they went into drawers and closets, looked under beds and couch and inside cupboards. In addition, they broke several things within the apartment: the shower door, the bed frame, a bureau, a nightstand, etc. When the officers admitted that they could not find the guy inside her apartment, they claimed to then be looking for drugs. They then proceeded to question her extensively regarding whether any men lived there or regularly came to and from the apartment.

§ 87(2)(b) found out afterwards that, while she was in the bathroom naked and handcuffed, an officer went in to her daughter's bedroom and kicked her in her leg. However, she did not witness this first-hand, and did not find it out until the incident was over. Being that she was naked, § 87(2)(b) was never searched, and no one ever asked her to squat. She did not know whether § 87(2)(b) and the other kids were ever searched. The officers remained approximately an hour and a half and did not recover anything from their search. § 87(2)(b) made a statement to the IAB officers the following day. In addition, she took her daughter § 87(2)(b) to § 87(2)(b) to obtain treatment for her leg, which was bruised.

Results of Investigation:

Victim Statement:

§ 87(2)(b) provided a statement to the IAB on April 22, 2003, the day of the incident (Enc. 8A-C), explained to medical personnel what happened to her the following day (Enc. 7) and was then interviewed at the CCRB on May 16, 2003 (Enc. 9A-C). The statements she provided were overall consistent, except that she told medical workers that an officer pushed her in addition to kicking her, which was never again mentioned. During her CCRB interview, § 87(2)(b) stated that at the time of the incident, she was at her apartment at § 87(2)(b) in Brooklyn, with her friends, § 87(2)(b) and § 87(2)(b) who both live in § 87(2)(b). Around 8:00 PM, they were in her bedroom watching a movie when her mother, § 87(2)(b) stated that she was going to take a shower. There was no one else inside the apartment.

Soon after her mother went to take the shower, § 87(2)(b) heard her dog barking at the front door. She went to see what the dog was barking at, and saw several police officers breaking in through her front door. There were more than five officers who had shields over their faces and guns in their hands, and about three officers in plain clothing. § 87(2)(b) ran back into her bedroom, but three officers with shields ran after her into her bedroom, and one of them told her and the other kids to put their hands up. As soon as the officers saw there were kids in the room they put their guns away. § 87(2)(b) put up her hands and, as she was doing so, asked an officer with a shield what was going on. He told her to "shut up," and proceeded to kick her onto her bed. He kicked her just below her left knee, and the momentum of the kick caused § 87(2)(b) to fall back onto her bed. He then left and another unidentified ESU officer entered the room, placed all three of them into handcuffs and took them to the living room to sit down. The rest of § 87(2)(b)'s statement was consistent with her mother's. Eventually the officers called § 87(2)(b) and § 87(2)(b)'s mother, § 87(2)(b) to come down and get them.

Witness Statements:

§ 87(2)(b) and § 87(2)(b) who reside in § 87(2)(b), both provided statement to the IAB on the date of the incident (Enc. 10, 12). They provided telephone statements to the CCRB on July 11, 2003 (Enc. 11A-B, 13A-B), which were entirely consistent with what they said to the IAB. They both stated that on April 22, 2003, around 8:30 PM, they were inside § 87(2)(b) with their friend § 87(2)(b) watching a movie inside her bedroom. Suddenly they heard a loud banging noise and § 87(2)(b) got up to see what it was. Before she reached the door, however, approximately four uniformed officers carrying guns and shields ran into the room. One of them carrying a shield told § 87(2)(b) to get onto the bed but, before she

could do so, he kicked her on her leg. § 87(2)(b) claimed that this officer was the first one to enter the room while § 87(2)(b) claimed he was the third officer to run into the room.

The officers then placed all three of them into handcuffs and brought them out to the living room. § 87(2)(b) was inside the bathroom. Eventually the officers with guns and shields left and were replaced by regular uniformed officers, who called § 87(2)(b) and § 87(2)(b)'s mother, § 87(2)(b). By then their handcuffs were removed and § 87(2)(b) came down and brought all three children upstairs.

Subject Officer (Lieutenant Michael Lipetri):

Lieutenant Michael Lipetri, of the 79th Precinct, was not interviewed at the CCRB. At the time of the incident he was a sergeant, and he was assigned to the Brooklyn Gang Division. However, in December of 2003 his command stated that Lieutenant Lipetri was temporarily assigned to Federal Bureau of Investigations training and was unavailable for the following three months. § 87(2)(g)

Witness Officers:

Detective Robert Herley, of the Brooklyn North Gang Squad, was interviewed at the CCRB on November 19, 2003 (Enc. 17A-B). He stated that on April 22, 2003, he was assigned as the arresting officer in a search warrant. He was working with Sergeant Lipetri, Detective Johnson and Detective Hare. Also present was a field team of ESU personnel.

In his independent recollection, Detective Herley explained that, at the time of the incident, he and other officers from his command were involved in an investigation for the entire building of § 87(2)(b) in Brooklyn, a large apartment complex, with respect to narcotics. Detective Herley received information from a confidential informant that there was particular drug activity coming from § 87(2)(b). As the arresting officer, he obtained a Supreme Court search warrant signed by a judge for that apartment. On the evening of April 22, 2003, Detective Herley went with the above-mentioned officers to the location. He entered after ESU secured the location; no injuries were called to his attention and there had been no incident with ESU.

Inside the apartment was an older Hispanic female in handcuffs, later identified as § 87(2)(b) and three young children who were not in handcuffs. He explained to § 87(2)(b) why they were there and showed her a copy of the search warrant. Detective Herley then proceeded to conduct an extensive search of the apartment, from which nothing was recovered. He never heard anyone inside the apartment complaining of injuries.

Officer Michael Bergin, Detective Richard Miller, Detective Raymond Neuman, Officer Edward Waldron and Sergeant Michael McCarthy, all of the Emergency Services Unit, were interviewed at the CCRB on October 16, 2003 (Enc. 14A-B), October 21 (Enc. 15A-B), October 21 (Enc. 16A-D), January 12, 2004 (Enc. 18A-D) and March 3, 2004 (Enc. 19A-D), respectively. Detective Miller (Bunker) and Officer Waldron (MP5) were assigned to the first entry team, while Detective Neuman (Bunker) and Officer Bergin (MP5) were assigned to the second entry team. Sergeant McCarthy was the supervisor of the team. Each officer was working from 2:00 PM to 11:00 PM.

None of the officers interviewed, with the exception of Officer Waldron, had an independent recollection of this incident. Officer Waldron remembered a female Hispanic wearing nothing but a towel inside the bathroom, but did not recall any of the civilians inside of the apartment alleging injuries. Additionally, Officer Waldron prepared the ESU Warrant Request. When asked why there is no entry noting which officers secured the three children, he explained that they were not handcuffed and there is therefore no officer noted.

Lieutenant Deborah Allen, of the Brooklyn Gang Division, was interviewed at the CCRB on March 4, 2004 (Enc. 20B-C). She stated that on April 22, 2003, she was working from 5:00 AM to 5:00 PM, assigned as the Integrity Control Officer of the command. Lieutenant Allen keeps a diary of her police activity (Enc. 20A), and had one entry of the search warrant executed at § 87(2)(b) noting that there was one female arrested at the scene.

Lieutenant Allen did not have an independent recollection of this incident. Her documentation did not note whether there were any civilians injured at the scene, but did note that one female was arrested and, she believed, transported back to the stationhouse. She did not know why that female would have been arrested.

Medical Records:

§ 87(2)(b) received treatment at § 87(2)(b) the day after the incident. She told medical personnel that she was kicked and pushed by a police officer. Her medical records note that she sustained an abrasion to her left lower leg (Enc. 21A-G).

Police Records:

The Search Warrant Pre-Execution Plan notes which officers from the command were assigned to the search warrant. It lists a floor plan, details of the manner of execution and potential hazards/problems (Enc. 22A-B). The search warrant obtained for this incident was for the accurate location, specifically for narcotics, proceeds generated by narcotics sales and a .32 caliber revolver. The warrant is dated § 87(2)(b), and stipulates that it must be executed within ten days of its issuance (Enc. 23).

The ESU Warrant Execution Request, prepared by Detective Neuman, notes the assignments of each officer and the details of the entry. It is further noted that Detective Waldron handcuffed a § 87(2)(b)-old Hispanic female standing in the bathroom wearing a towel. Although it notes three children secured in the bedroom, there is no officer listed as having secured them because, according to Officer Waldron, the children were not placed into handcuffs (Enc. 24A-D).

Complainant/Officer Histories:

§ 87(2)(b) has no prior arrest history, and this is her first complaint with the CCRB. Lieutenant Lipetri has one previously substantiated CCRB allegation for discourteous language, for which he received a command discipline. He has been with the police department for ten years (Enc. 1).

Conclusions and Recommendations:

Officer Identification:

The officers involved in this incident were identified when ESU documents were obtained and listed which ESU officers were assigned to the warrant, and Detective Robert Herley as the warrant officer. At the time of his interview, Detective Herley identified the other officers from his command involved in executing the warrant. Lieutenant Lipetri was identified as the subject officer because he was the supervisor at the scene.

§ 87(2)(b) claimed that she was kicked by an officer carrying a shield; this was supported by § 87(2)(b) and § 87(2)(b). The only officers carrying shields were Detective Miller and Detective Neuman. However, neither of those officers was able to recall the incident, and § 87(2)(b) stated that she would not be able to identify from a photo array which officer kicked her. Also, because the officers claim that she was not handcuffed, it is not noted in the paperwork which entry team secured her. § 87(2)(g)

Credibility:

§ 87(2)(g)

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All of the ESU officers interviewed for this case denied memory of the incident, excepting Officer Waldron. Officer Waldron, however, secured § 87(2)(b) in the bathroom and would therefore have no knowledge of an officer using physical force against § 87(2)(b) § 87(2)(g)

Allegation A) Abuse of Authority: Lieutenant Michael Lipetri entered and searched § 87(2)(b)

This investigation has determined that Lieutenant Michael Lipetri was the supervisor of a warrant execution for a § 87(2) search warrant. § 87(2)(g)

Allegation B) Force: An officer used physical force against § 87(2)(b)

The above discussion of officer identification explains why this investigation was unable to determine which officer used physical force against § 87(2)(b) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: